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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,415	07/20/2001	Judith P. Meyers	Mask	9645

23217 7590 06/13/2003

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EXAMINER

NERBUN, PETER P

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/910,415

Applicant(s)

MEYERS, JUDITH P.

Examiner

Peter P Nerbun

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The drawings are objected to pursuant to 37 CFR 1.84. Figures 1-5 are presented as photographic images. Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (e.g., immunological, western, Southern, and northern), auto- radiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. Since photographs are not the only practicable medium for illustrating the claimed invention, the drawings must be filed in place of the photographs if a reply is made to the instant Office action.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4,7,9-12,15,18-30,32,34,35,37, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson. The patent to Olson discloses a mask formed from a substantially pliable material 10, Figs. 1-3, a first attachment member 15 on one portion of said mask for attachment to a first portion 16, Figs. 1, 3 of an eyeglass

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frame, and a second attachment member 15 on a second (opposite) portion of the mask for attachment to a second (opposite) portion 16 of an eyeglass frame. Claim 19 defines the mask product in terms of the process of making it (viz. by molding the mask from a substantially flat material). Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). In the instant application the mask product as defined in claim 19 is the same as the mask product 10, Figs. 1, 3 disclosed by Olson.

Claims 1-3,6,10-14,17,21-28,30-32, and 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated Honsaker. The patent to Honsaker discloses a mask formed from a substantially pliable material 10, Figs. 1-4, a first attachment member 17, Figs. 2-4 on one portion of said mask for attachment to a first portion 18, Fig. 2 of an eyeglass frame, and a second attachment member 17 on a second (opposite) portion of the mask for attachment to a second (opposite) portion 18 of an eyeglass frame.

Claims 1,5,16,26, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated Piper (U.S.P. 3,823,418, cited by applicant on the PTO-1449). The patent to Piper discloses a mask formed from a substantially pliable material 10, Figs. 1-2, a first attachment member 34 on one portion of said mask for attachment to a first portion 38

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of an eyeglass frame, and a second attachment member 34 on a second (opposite) portion of the mask for attachment to a second (opposite) portion 38 of an eyeglass frame.

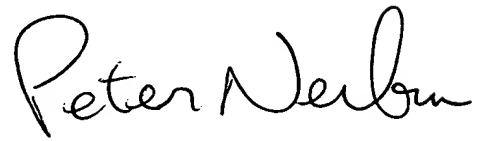
Claims 1,8,23,24,26,29, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Beauvais (U.S.P. 3,009,163). The patent to Beauvais discloses a mask formed from a substantially pliable material, a first attachment member 8, Figs. 1,3 on one portion of said mask for attachment to a first portion of an eyeglass frame, and a second attachment member 8 on a second (opposite) portion of the mask for attachment to a second portion of an eyeglass frame (see Fig. 3).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P Nerbun whose telephone number is 703-308-0955. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and - for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

Peter Nerbun
June 10, 2003


Peter Nerbun
Primary Examiner